



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
841 Chestnut Building
Philadelphia, Pennsylvania 19107

159737

OVERNIGHT MAIL

AUG 02 1991

Mr. Arthur Haines
921 North Hill Drive
West Chester, Pa. 19380

Re: 2914 N. American Street

Dear Mr. Haines,

Enclosed you will find an executed copy of Consent Order Docket No. III-91-46-DC which requires you to perform certain removal tasks at 2314 North American Street in Philadelphia, Pennsylvania. The Consent Order became effective on the date it was signed by the EPA Regional Administrator. If you have any concerns or questions please contact me at (215) 597-4458.

Sincerely,

Christopher P. Thomas
On-Scene Coordinator

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

I hereby certify that the
within is a true and correct copy
of the original Consent Order filed
in this matter. August 2, 1991

IN THE MATTER OF:

2314 North American Street Site

Arthur Haines,

Respondent

Proceeding Under Sections 106(a)
and 122 of the Comprehensive
Environmental Response, Compens-
ation, and Liability Act of 1980,
as amended by the Superfund
Amendments and Reauthorization
Act of 1986, 42 U.S.C. §§9606(a)
and 9622

Wayne R. Walters
Attorney for

Docket No. III-91-46-DC

**ADMINISTRATIVE ORDER BY CONSENT
FOR REMOVAL ACTION**

The parties to this Administrative Order by Consent ("Consent Order" or "Order"), Arthur Haines ("Haines" or "Respondent") and the United States Environmental Protection Agency ("EPA"), having agreed to the entry of this Consent Order, it is therefore Ordered, that:

I. JURISDICTION

1.1 This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9606(a) and 9622 ("CERCLA"), delegated to the EPA by Executive Order No. 12,580, 52 Fed. Reg. 2923 (1987), and further delegated to the Regional Administrators of EPA. This Consent Order pertains to property located at 2314 North American Street, County of Philadelphia, Philadelphia, Pennsylvania. The property will hereinafter be referred to as "American Street" or "the Site", and is further described in paragraph 3.1 below.

1.2 The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order.

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1.3 The actions taken pursuant to this Consent Order shall be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended, ("NCP") and CERCLA.

1.4 The Respondent consents to and will not contest EPA's authority or jurisdiction to issue or to enforce this Consent Order.

II. STATEMENT OF PURPOSE

2.1 In entering into this Consent Order, the mutual objectives of EPA and Respondent are to conduct a removal action, as defined in Section 101(23) of CERCLA, 42 U.S.C. §9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site (as hereinafter defined), and to properly dispose of the hazardous substances located there.

III. FINDINGS OF FACT

3.1 By Deed dated January 26, 1984 and recorded February 8, 1984 in the Department of Records for Philadelphia County, Arthur Haines purchased 2314 North American Street in Philadelphia, Pennsylvania (the Site).

3.2 From January 26, 1984, until April 18, 1990, Respondent, as President of the Murd Company, conducted chemical processing operations at the Site. On April 18, 1990, Murd Company filed Chapter 7 Bankruptcy proceedings in United States Bankruptcy Court, Eastern District of Pennsylvania.

3.3 From April 4, 1989, until September 28, 1990, EPA conducted emergency removal activities at the E.Z. Chemical Company (E.Z.) facility located at Laurel and Canal Streets in Philadelphia, Pennsylvania. During the removal activities, EPA allowed certain companies, including the Murd Company, to remove chemicals from the E.Z. facility, provided that the companies agreed that the chemicals would be disposed of or recycled properly, or used in an industrial process.

3.4 On May 23, 1989, Arthur Haines signed a Voluntary Letter of Compliance (Compliance Letter) with EPA whereby Mr. Haines and Murd Company agreed to remove the chemicals from the E.Z. facility for the purposes of handling, disposing and/or using the chemicals in their process operations in accordance with all Federal, state, and local laws.

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3.5 The chemicals shipped to the Site from the E.Z. facility included cresylic acid, hydrofluoric acid, lead nitrate, and calcium hypochlorite.

3.5(a) On or about August 17, 1989, 29 five hundred pound drums of hydrofluoric acid from the E.Z. facility were sent to the Site.

3.5(b) On or about June 20, 1989, 1 fifty-five gallon drum of calcium hypochlorite from the E.Z. facility was sent to the Site.

3.5(c) On or about July 6, 1989, 152 fifty-five gallon drums of calcium hypochlorite from the E.Z. facility were sent to the Site.

3.6 On or about April 1, 1991, the EPA Region III Emergency Response Center received a notice from the Philadelphia Fire Department that chemicals were being improperly stored at the American Street Site. These chemicals included those sent to the American Street Site from the E.Z. facility during EPA's 1989 cleanup, as described in paragraph 3.3 above. The Philadelphia Fire Department reported that those chemicals, which included oxidizer chemicals and acids and possibly solvents and flammable chemicals, were being improperly stored at the American Street Site in close proximity to each other, posing a threat of fire and/or reactivity.

3.7 On or about April 8, 1991 EPA and the Philadelphia Fire Department conducted an inspection of the American Street Site. EPA and the Philadelphia Fire Department found approximately 150 full drums of calcium hypochlorite in advanced states of deterioration, and in some instances leaking. Markings on these drums indicated that the drums had been shipped to the American Street Site from the E.Z. facility during June and July 1989.

3.8 Cresylic acid, hydrofluoric acid, lead nitrate, and calcium hypochlorite are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. §9601(14), because they are listed at 40 C.F.R. §302.4.

3.9 Approximately 25 fifty-five gallon drums of hydrofluoric acid, and approximately six full five gallon pails of lead nitrate were found at the Site by EPA and the Philadelphia Fire Department. These drums were rusted, corroded and in some instances, leaking. Markings on these drums indicated that they had been shipped to the American Street Site from the E.Z. facility during August and October 1989.

3.10 On June 19, 1991 EPA determined that the conditions at the American Street Site presented a threat to human health and the environment. This determination is based on the fact that incompatible chemicals are being stored in proximity to each

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other in containers that are rusted, corroded and in some instances, leaking. Should the incompatible chemicals interact, hazardous vapors would be released to the environment, thereby endangering the health of nearby industrial workers and residents.

3.11 Respondent has not handled, disposed or used the chemicals removed from the E.Z. facility as agreed to pursuant to the terms of the May 23, 1989 Compliance Letter.

IV. CONCLUSIONS OF LAW

4.1 The American Street Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

4.2 The Respondent is a person as defined by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

4.3 Hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. §9601(14), have been improperly stored, or disposed of at the American Street Site and are currently present there.

4.4 The presence of hazardous substances at the Site and the past, present, and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

4.5 The Respondent is an owner and operator of the Site, within the meaning set forth in Section 101(20) of CERCLA, 42 U.S.C. §9601(20). Respondent is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

4.6 The Respondent arranged for the disposal or treatment of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, U.S.C. §9607(a)(3).

V. DETERMINATIONS

Based on the Findings of Fact and Conclusions of Law set forth above, and upon EPA's review of information in the Administrative Record, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

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5.2 The actions required by this Consent Order are necessary to protect the public health and welfare and the environment.

5.3 Because there is a threat or potential threat to public health or welfare or the environment, a removal action is appropriate to abate, minimize, stabilize, mitigate or eliminate the release or threat of release of hazardous substances at or from the Site.

VI. PARTIES BOUND

6.1 This Consent Order shall apply to and be binding upon Respondent and EPA, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for either the Respondent, or EPA, or any combination thereof. No change in ownership or corporate or partnership status relating to the Site will in any way alter the status of the Respondent or his responsibilities under this Consent Order.

6.2 In the event of any change in ownership or control of the Site, Respondent who is the owner/operator of the Site shall notify the EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Consent Order to the transferee in interest of the Site, prior to any agreement for transfer.

6.3 The Respondent shall provide a copy of this Consent Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Consent Order, and shall condition all such contracts on compliance with the terms and conditions of this Consent Order.

6.4 The Respondent agrees to be legally bound by the terms and conditions of this Consent Order.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Consent Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

VIII. WORK TO BE PERFORMED

8.1 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), Respondent is ordered to and hereby agrees to commence and complete performance of the following response actions (the "Work" or "Work") within the time periods specified.

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8.2 Within five (5) business days of the effective date of this Consent Order, Respondent shall retain a qualified contractor to conduct the Work identified in this Consent Order and notify EPA in writing of the identity and qualifications of the contractor. Prior to the initiation of Work, Respondent shall further notify EPA in writing regarding the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Consent Order. All supervisory personnel, contractors, subcontractors and/or other persons performing cleanup activities at the Site shall meet the applicable Occupational Safety and Health Administration ("OSHA") requirements as defined in 29 C.F.R. §1910.120. The use of supervisory personnel, contractors, subcontractors and Respondent's Project Coordinator designated pursuant to Section IX, including any replacements, is subject to acceptance by EPA. EPA may disapprove the use of any supervisory personnel, contractor, subcontractor and/or Respondent's Project Coordinator if EPA believes any such entity is not appropriate to perform the Work. In the event of a disapproval by EPA, Respondent shall notify EPA within five (5) days of receipt of EPA disapproval of the supervisory personnel, contractor, subcontractor and/or Respondent's Project Coordinator who will replace the one(s) disapproved by EPA.

8.3 Within seven (7) business days of the effective date of this Consent Order, Respondent shall submit a Work Plan ("WP") to the EPA for the Work to be implemented and shall include a schedule of operations for expeditious performance of the Work. The WP shall be consistent with the NCP and shall be subject to approval by EPA according to the provisions of paragraphs 8.4 and 8.8 below. The following are the minimum Work items that are to be detailed in the WP:

- a. A Site Health and Safety Plan ("Safety Plan") to protect the health of workers, other personnel and the public from the hazardous substances and work-related health and safety hazards during performance of the work specified herein;
- b. A plan to provide site security;
- c. A plan to provide fire protection;
- d. A plan to identify, segregate, overpack and dispose of materials containing hazardous substances, pollutants, or contaminants or materials contaminated with hazardous substances, pollutants or contaminants, which pose a threat of release, fire or explosion at the Site. Such plan shall include all cresylic acid, hydrofluoric acid, lead nitrate, and calcium hypochlorite which are currently being improperly stored at the Site, and shall identify measures that

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will consider reuse or recycling of appropriate materials, means to destroy contamination, and measures to prevent the spread of pollution to the maximum extent practicable;

- e. A plan to identify, segregate, overpack and dispose of other materials containing hazardous substances, pollutants, or contaminants or materials contaminated with hazardous substances, pollutants, or contaminants which pose a threat of release, fire, or explosion at the Site, in addition to those materials listed in (8.3)(d) above, which were shipped from the E.Z. facility to the Site, and to identify measures that will consider reuse or recycling of appropriate materials, means to destroy contamination and measures to prevent the spread of pollution to the maximum extent practicable;
- f. A plan to remove contamination from the Site in accordance with items (d) and (e), above;
- g. An expeditious schedule for implementation of the WP.

8.4 EPA will review the WP and notify the Respondent of EPA's approval or disapproval of the WP. In the event of disapproval, EPA will specify the deficiencies in writing. The Respondent shall respond to and correct the deficiencies identified by EPA and resubmit the WP to EPA within five (5) business days of receipt of EPA disapproval. Approval, disapproval and/or modification by EPA of the subsequent WP submission shall be according to the provisions of Paragraph 8.8 below. Approval of the WP shall not limit EPA's authority under the terms of this Order to require Respondent to conduct activities consistent with this Order to accomplish the Work outlined in Paragraph 8.3 of this Order.

8.5 Within five (5) business days of receipt from EPA of written approval of the WP, the Respondent shall begin implementation of the Work in accordance with the WP and the schedule therein, and shall further conduct and complete the Work required in the WP in accordance with the approved WP and schedule therein.

8.6 Beginning seven (7) calendar days subsequent to the date of receipt of EPA approval of the WP and every seven (7) days thereafter until EPA advises Respondent that the Work is complete, the Respondent shall provide EPA with a progress report for each preceding 7 day period. The progress reports shall include, at a minimum: 1) a description of the Work completed and the actions that have been taken toward achieving compliance with this Consent Order; 2) a description of all data anticipated and activities scheduled for the next 7 days; 3) a description of any problems encountered or anticipated; 4) any actions taken to

prevent or mitigate such problems; 5) a schedule for when such actions will be completed; 6) copies of all analytical data received during the reporting period; and 7) all modifications to the Work, WP and schedule made in accordance with Section XVIII to this Consent Order during the reporting period.

8.7 Documents, including work plans, reports, sampling results and other correspondence to be submitted pursuant to this Consent Order shall be sent by certified or express mail to the EPA Project Officer, designated pursuant to Paragraph 9.2 below.

8.8 All WPs, reports, plans, specifications, schedules and attachments required by this Consent Order are subject to EPA approval and shall be incorporated into this Consent Order upon approval by EPA. In the event that EPA disapproves any required submission, EPA will specify the deficiencies in writing. Within five (5) business days of receipt of EPA disapproval, Respondent shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA may submit its own modifications to the Respondent, in which case the Respondent is hereby required to implement such modifications. Alternatively, EPA may perform the response action and seek reimbursement of its costs from Respondent and/or take any other action authorized by law. Any non-compliance with such EPA-approved WPs reports, plans, specifications, schedules, and attachments, submission of deficient revisions following EPA disapproval, or non-compliance with EPA required modifications in the case of subsequent disapprovals as specified in this paragraph, shall be considered a failure to comply with a requirement of this Consent Order. Determination(s) of non-compliance will be made by EPA.

8.9 Respondent shall provide to EPA upon written request any and all information resulting from and/or pertaining to Work performed by Respondent pursuant to this Consent Order including, but not limited to, analytical data (including raw data), Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility), identities of treatment, storage and/or disposal facilities used, identities of transporters used, identities of any contractors, supervisory personnel and subcontractors used, information and documents concerning Respondent's compliance with Quality Assurance and Quality Control requirements of this Order, information and documents relating to Respondent's efforts to secure access, where appropriate, and information and documents relating to any project delays. Nothing herein shall be interpreted as limiting the inspection and information-gathering authority of EPA under Federal law.

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8.10 Within ten (10) calendar days of the completion of all of the Work required in the approved WP, Respondent shall submit a written report to EPA detailing the Work completed, and notifying EPA of such completion. EPA may inspect the Work for adequacy of Respondent's performance of such Work. EPA will notify Respondent, in writing, of any Work deficiencies and the corrective Work actions required to correct these deficiencies at the Site. Such required corrective Work actions shall be performed consistent with the NCP and all applicable Federal laws or regulations. Respondent shall take the necessary corrective Work actions to address any Work deficiencies identified by EPA.

8.11 Respondent shall not remove any waste materials from the Site, except in conformance with the terms of this Consent Order and all applicable Federal, State or local laws or regulations, as required by the NCP.

8.12 Respondent shall not commence any response actions or Work required by this Consent Order, except in conformance with the terms of this Consent Order.

IX. DESIGNATED PROJECT COORDINATORS

9.1 The Project Coordinator for EPA and Respondent shall be responsible for overseeing the Work required by this Consent Order. Respondent shall notify EPA of his Designated Project Coordinator no later than five (5) days after the effective date of this Consent Order. To the maximum extent possible, communications between the Respondent and EPA, and all documents, including WP reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed to the Project Coordinators.

9.2 The Project Coordinator for EPA is:

Christopher P. Thomas
On-Scene Coordinator
U.S. Environmental Protection Agency
Removal Enforcement Section (3HW33)
841 Chestnut Building
Philadelphia, PA 19107
(215) 597-5998

9.3 The Respondent shall have the right to change his Project Coordinator by notifying the EPA in writing at least five (5) days prior to the change.

9.4 EPA shall have the ability to change its Project Coordinator at any time without prior notice to Respondent. EPA's intent is

to notify the Respondent as soon as practicable following any such change in its Project Coordinator.

9.5 The absence of the EPA Project Coordinator from the Site shall not be cause for the stoppage or delay of Work except when such stoppage or delay is specifically required by EPA.

X. QUALITY ASSURANCE

10.1 The Respondent shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities required by this Consent Order. The Respondent shall consult with EPA in planning for, and prior to, all sampling and analysis required by the approved WP. The Respondent shall use a laboratory(s) which has a documented Quality Assurance Program that complies with EPA guidance document QAMS-005/80.

XI. SITE ACCESS

11.1 As of the effective date of this Consent Order, Respondent shall provide access to EPA and its employees, agents, consultants, contractors, and other authorized and/or designated representatives for the purposes of conducting and/or overseeing any Work required by or relating to this Consent Order. Such access shall permit EPA and its employees, agents, consultants, contractors, and other designated representatives to conduct all activities described in paragraph 11.2 of this Consent Order.

11.2 EPA and/or its representatives shall have the authority to enter and freely move about the location where the response action and/or Work is being performed at all reasonable times for the purpose of, inter alia: inspecting Work, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of the Respondent in carrying out the terms of this Consent Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment; and verifying the data submitted to EPA by the Respondent. The Respondent shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, in any way pertaining to Work undertaken pursuant to this Consent Order.

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11.3 Notwithstanding any provision of this Consent Order, EPA retains all of its access and information-gathering authorities and rights under CERCLA, and any other applicable statute or regulation.

XII. DISPUTE RESOLUTION

12.1 If the Respondent objects to any EPA notification of deficiency, disapproval or other EPA action taken pursuant to this Consent Order, including billings for oversight costs, the Respondent shall notify EPA in writing of its objection(s) within fourteen (14) days of receipt of such notification or action.

12.2 EPA and the Respondent shall have an additional fourteen (14) days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any issue within this fourteen (14) day period, EPA will provide a written statement of its decision to the Respondent. Respondent's obligations under this Consent Order shall not be tolled by submission of any objection for dispute resolution under this Section XII.

12.3 In order to prevail in any dispute regarding oversight costs, Respondent must demonstrate that the costs have been calculated incorrectly or have been incurred in a manner inconsistent with the NCP.

XIII. DELAY IN PERFORMANCE AND STIPULATED PENALTIES

13.1 For each day or portion thereof of failure of the Respondent to comply with any requirement of this Consent Order at the time and in the manner set forth herein, the Respondent shall be liable, upon demand, to EPA for the sums set forth below as stipulated penalties. Checks shall be made payable to the Hazardous Substance Superfund. Checks shall be addressed to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting
P.O. Box 360515M
Pittsburgh, PA 15251

Payment shall be made by cashier's or certified check within thirty (30) calendar days of receipt of demand. A copy of the transmittal letter shall be sent to the EPA Project Coordinator. A copy of the transmittal letter and check shall be sent to: EPA Region III Hearing Clerk (3RC00), 841 Chestnut Building, Philadelphia, PA 19107.

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13.2 Stipulated penalties shall accrue in the amount of \$5,000 per calendar day per violation. The stipulated penalties set forth in this Section do not preclude EPA from pursuing other penalties or sanctions available to EPA for failure to comply with the requirements of this Consent Order.

XIV. FORCE MAJEURE AND NOTIFICATION OF DELAY

14.1 The Respondent, through its Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Consent Order. Such notification shall be made verbally as soon as possible but not later than two (2) days after any such delay or anticipated delay and in writing no later than seven (7) days after Respondent becomes aware of such delay or anticipated delay. The written notification shall describe fully the nature of the delay, including how it may affect the Work, WP and schedule, the reasons the delay is beyond the control of Respondent if appropriate, the actions that will be or have been taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the future actions to mitigate, prevent and/or minimize the delay will be taken. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

14.2 Any such delay that results from circumstances beyond the control of the Respondent and that cannot be overcome by due diligence on the Respondent's part, shall not be deemed to be a violation of his obligation(s) under this Consent Order, and shall not make the Respondent liable for the stipulated penalties contained in Section XIII, "Delay in Performance and Stipulated Penalties", above. To the extent a delay is caused by circumstances beyond the control of the Respondent, that cannot be overcome by due diligence, the schedule affected by the delay shall be extended for a period EPA deems necessary to complete the Work on an expedited basis, but no greater than a period equal to the delay directly resulting from such circumstances. Increased costs of performance of the terms of this Consent Order or changed economic circumstances shall not be considered circumstances beyond the control of the Respondent. Delay in one item or component of Work or the WP does not justify delay in timely achievement of other items or components. Each such item must be separately addressed and delay substantiated, according to the provisions of paragraph 14.1 above.

14.3 Failure of the Respondent to comply with the notice requirements of paragraph 14.1 above shall constitute a waiver of the Respondent's right to invoke the benefits of this section with respect to that event.

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14.4 In the event that EPA and the Respondent cannot agree that any delay in compliance with the requirements of this Consent Order has been or will be caused by circumstances beyond the control of the Respondent that cannot be overcome by due diligence, the dispute shall be resolved in accordance with the provisions of Section XII of this Consent Order, "Dispute Resolution".

14.5 The Respondent shall have the burden of proving that the delay was caused by circumstances beyond his control which could not have been overcome by the exercise of due diligence, the necessity of the proposed length of the delay, and that the Respondent took all reasonable measures to avoid and minimize delay.

XV. RESERVATION OF RIGHTS

15.1 Except as expressly provided in this Consent Order, (1) each party reserves all rights, claims, interests and defenses it may otherwise have, and (2) nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Consent Order, including the right to seek injunctive relief, and the imposition of statutory penalties.

15.2 As provided by this Consent Order, EPA expressly reserves its right to disapprove of Work performed by the Respondent and reserves its right to request and require Respondent to correct and/or to re-perform any and all Work disapproved by EPA, and to request the Respondent to perform response actions in addition to those required by this Consent Order. In the event that the Respondent declines to perform such actions or additional actions, EPA reserves the right to undertake such actions and seek reimbursement of the costs incurred, and/or to seek any other appropriate relief including requiring Respondent to perform such actions. In addition, EPA reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and to seek reimbursement for any costs incurred, and/or to seek any other appropriate relief.

15.3 EPA reserves the right to bring an action against the Respondent for recovery of all response and oversight costs incurred by the United States related to this Consent Order and not reimbursed by the Respondent, as well as any other costs incurred by the United States in connection with response actions conducted pursuant to CERCLA at the Site.

15.4 This Consent Order concerns certain removal response activities (Work described in Section VIII above) at the Site. The Work required by this Consent Order may not fully address all

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contamination at the Site. Subsequent response activities which may be deemed necessary by EPA are not addressed by this Consent Order. EPA reserves all rights including, without limitation, the right to institute legal action against Respondent, and any other parties, in connection with the performance of any response actions not addressed by this Consent Order.

15.5 Nothing in this Consent Order shall limit the authority of the On-Scene Coordinator as outlined in the NCP and CERCLA.

XVI. OTHER CLAIMS

16.1 Nothing in this Consent Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Consent Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

16.2 This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2).

16.3 By consenting to the issuance of this Consent Order, the Respondent waives any claim to reimbursement it may have under Sections 106(b), 111 and 112 of CERCLA, 42 U.S.C. §§9606(b), 9611 and 9612.

XVII. OTHER APPLICABLE LAWS

17.1 All Work required to be taken pursuant to this Consent Order shall be undertaken in accordance with the requirements of all applicable local, State, and Federal laws and regulations, as required by the NCP.

XVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

18.1 The effective date of this Consent Order shall be the date on which it is signed by EPA.

18.2 This Consent Order may be amended by mutual agreement of EPA, and the Respondent. Such amendments shall be in writing and shall have as their effective date, the date on which such

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amendments are signed by EPA. Minor modifications to the Work, WP and schedule approved pursuant to this Consent Order may be made by mutual agreement of the Project Coordinators. Such modifications shall be memorialized in writing by the Project Coordinators.

18.3 Any WP, reports, plans, specifications, schedules, or other submissions required by this Consent Order shall be, upon approval by EPA, incorporated into this Consent Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other submissions shall be considered non-compliance with the requirements of this Consent Order and will subject the Respondent to the requirements of Section XIII "Delay in Performance and Stipulated Penalties", above. Determinations of non-compliance will be made by EPA.

18.4 No informal advice, guidance, suggestions or comments by EPA regarding WPs, reports, plans, specifications, schedules, or other submissions by the Respondent or the requirements of this Consent Order will be construed as relieving the Respondent of his obligation to obtain formal approval when required by this Consent Order, and to comply with the requirements of this Consent Order unless formally modified.

XIX. LIABILITY OF THE UNITED STATES GOVERNMENT

19.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondent, or of his employees, agents, servants, receivers, successors, or assigns, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities, including but not limited to Work pursuant to this Consent Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondent in carrying out activities, including but not limited to Work pursuant to this Consent Order.

XX. REIMBURSEMENT OF COSTS

20.1 After the completion of the Work required pursuant to this Consent Order, EPA shall submit to Respondent an accounting of all oversight costs incurred by the U.S. Government with respect to this Consent Order. Oversight costs shall consist of all costs incurred by EPA, its agents, or contractors in connection with EPA's oversight of the Work to be done by Respondent and its contractors under the terms of this Consent Order.

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20.2 Respondent shall, within thirty (30) calendar days of receipt of the accounting, remit a check for the amount of those costs made payable to the EPA Hazardous Substance Superfund. Interest at a rate in accordance with regulations of the U.S. Treasury shall begin to accrue on the unpaid balance from the day after the expiration of the thirty day period, even if there is a dispute or an objection to any portion of the costs. Checks shall specifically reference the Site and shall be addressed as specified in Section XIII of this Consent Order.

XXI. CERTIFICATION OF COMPLIANCE

21.1 Any notice, report, certification, data presentation, or other document submitted by Respondent under or pursuant to this Consent Order, which discusses, describes, demonstrates, or supports any finding or makes any representation concerning Respondent's compliance or non-compliance with any requirement(s) of this Consent Order shall be certified by Respondent.

21.2 The certification of the Respondent required by paragraph 21.1 of this Consent Order shall be in the following form:

"I certify that the information contained in or accompanying this (specify type of submission) is true, accurate and complete."

Signature: _____
Name (print): _____

XXII. CALCULATION OF TIME

22.1 Any reference to "days" in this Consent Order shall mean calendar days, unless otherwise specifically provided herein. Any reference to "business days" shall mean every day of the week except Saturdays, Sundays and federal holidays.

XXIII. TERMINATION AND SATISFACTION

23.1 The Respondent's obligations to EPA under this Consent Order shall terminate and be deemed satisfied upon the Respondent's receipt of written notice from EPA that the Respondent has demonstrated, to the satisfaction of EPA, that all the terms of this Consent Order have been satisfactorily completed.

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2314 N. American Street Site 17

Docket No. III-91-46-DC

FOR THE RESPONDENT:

BY:
Name:

Arthur O. Harris

DATE:

6/27/91

AR100090

FOR THE EPA:

BY:

Edwin B. Erickson
Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection
Agency

DATE: 8-1-91

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